

6122/62344

REMARKS

The application has been reviewed in light of the Office Action dated April 02, 2003. Claims 1-10 are pending with claim 1 being in independent form. Claim 1 has been amended hereby to place it in better condition for allowance. It is submitted that no new matter has been added and no new issues have been raised by the present Amendment.

In response to the Examiner's rejection, Applicants respectfully traverse, and maintain that the Examiner has failed to establish a *prima facie* case of obviousness. Applicants have carefully considered the Examiner's comments and the cited references, and respectfully submit that independent claim 1 is patentable over the cited references for at least the following reasons.

The present invention is intended to provide and improved cover latch for a dispenser comprising a thin, plastic pull rod adapted for outward sliding movement, a handle is attached on one end to the pull rod and is adapted to be pulled by both hands of the user, because an automatic dispenser will sense the free hand of the user if only one hand is used. A support member is attached to another end of the pull rod, a plurality of latches is attached to the support member for engaging corresponding catches in the dispenser when the cover latch is in a locked position, and a plurality of springs is attached to the support member for maintaining the cover latch in the locked position. Pulling the handle places the thin, plastic

6122/62344

pull rod in tension and compresses the plurality of springs and disengages the plurality of latches from the catches to allow a cover of the dispenser to be opened, and closing the cover re-engages the plurality of latches and draws the handle against the dispenser.

The APA relates to a latch mechanism shown in Fig. 1. The latch mechanism utilizes a push bar that is depressed by a user to disengage latches and unlock the cover. This places the bar in compression so that it must be robust. The latches engage catches molded into the cover to lock the cover in place. The push springs bear against surfaces in the base of the dispenser. As the cover is closed, the catches formed in the cover contact and slide along the push latch ramps, the push springs are compressed, and the latch mechanism moves into the body of the dispenser. When the catches clear the end of the push latch ramps, the push springs expand and cause the latch mechanism to snap into the locked position. Fully depressing the push bar into the dispenser disengages the push latch ramps from the catches and allows the cover to be opened. The push latch ramps are necessarily oriented toward the push bar in order to allow them to disengage from the catches when the push bar is depressed. Similarly, the push springs are necessarily oriented away from the push bar and toward the push latch ramps in order to compress when the push bar is depressed to disengage the latches.

The examiner notes that the APA does not disclose a pull

6122/62344

rod having a circular cross section adapted for outward sliding movement, nor does it disclose that by pulling the pull rod the latches are disengaged from the catches. To cure these deficiencies, Harrell is cited to show a pull rod having a circular cross section, wherein by the act of pulling the pull rod the latches are disengaged from the catches.

Harrell, as understood by Applicants, relates to an article dispensing machine for dispensing one article at a time, comprising a manually operable linearly moveable pull bar and means for locking the pull bar. The pull bar is a steel rod and is pivotally linked to traversing means which traverses supporting means which support the article, for manually actuating the traversing means, the pull bar having affixed to it a member having equally spaced notches. The locking means has a pawl co-acting with the notches and has a locking position to prevent movement of the pull bar.

It is respectfully submitted that there is no showing or suggestion of a thin, plastic pull rod with a two-handed handle, as in the presently claimed invention

Furthermore, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art

6122/62344

reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious *unless the prior art itself suggested the desirability of the modification*. See In re Fritch, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992) (emphasis added). The motivation to modify cannot come from the present invention. See Heidelberger Drucksmaschinen AG v. Hantscho Commercial Products, 21 F.3d 1068, 1072, 30 U.S.P.Q.2d 1377, 1380 (Fed. Cir. 1994).

It has been held that "[a] rejection based on section 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art...The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis." In re Warner and Warner, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (CCPA 1967).

The previous Office Action maintains that it would have

6122/62344

been obvious to one of ordinary skill in the art at the time the invention was made to have a pulling rod device in order to perform a pulling act because it would be considered a design consideration and would have the same purpose of disengaging the latches from the catches in order to open or close the cover.

Applicants respectfully submit that, even combining the APA with Harrell, the subject matter of amended independent claim 1 is not disclosed. Neither the APA nor Harrell provide any suggestion of any benefit to be had by incorporating a pull rod. The APA teaches away from using a pull rod and instead shows a push bar. Harrell discloses a pull bar but is completely silent regarding the benefits on the use of the pull bar.

The Examiner alleges that Applicants are merely reversing parts in order to achieve the same purpose as the APA in disengaging latches from catches in order to open or close a cover. The Examiner has failed, however, to realize that just because the purpose of the APA and Applicants' claimed invention may be similar does not necessarily make different means to achieve such similar purpose obvious to one of ordinary skill in the art without some sort of motivation, which the APA and Harrell both fail to provide.

Further, the Examiner notes that Harrell shows that use of a pull rod to open a cover latch of a dispenser is known in the art but fails to point to anything in Harrell that

6122/62344

provides some motivation for one of ordinary skill to combine Harrell with the APA. The present invention is seeking to improve the typical design known in the art, as illustrated in the APA, by incorporating a pulling mechanism instead of using the existing and known pushing mechanism to compress a plurality of springs and disengage a plurality of latches. See Applicants' Specification, Page 3, Lines 7-16. Simply because the pulling mechanism of Harrell exists in the art does not necessarily mean that it would have been an obvious design consideration to replace the pushing mechanism of the APA with the pulling mechanism of Harrell, especially when the Examiner fails to provide any motivational support for such an argument from the APA, Harrell, or any other reference. It must therefore be logically concluded, as to the Examiner's obviousness arguments, that the motivation to modify came from the present invention.

Because the Examiner failed to particularly point out, in both the APA and Harrell, any teaching that would provide motivation for one of ordinary skill in the art to combine the teachings of the APA and Harrell, the Examiner has failed to establish a *prima facie* case of obviousness.

Accordingly, Applicants respectfully submit independent claim 1 is patentable under 35 U.S.C. § 103(a) over the APA and Harrell, both alone or in combination. Claims 2-10 depend from claim 1 which for the reasons set forth hereinabove is thought to be patentably distinct over the cited references

6122/62344

and, for at least those very same reasons, claims 2-10 are also submitted to be patentably distinct thereover.

The Office is hereby authorized to charge any additional fees that may be required in connection with this amendment and to credit any overpayment to our Deposit Account No. 03-3125.

If a petition for an additional extension of time is required to make this response timely, this paper should be considered to be such a petition, and the Commissioner is authorized to charge the requisite fees to our Deposit Account 03-3125.

If a telephone interview could advance the prosecution of this application, the Examiner is respectfully requested to call the undersigned attorney.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,

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